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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John W. Muncaster

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JACK A. KANZ

502 SOUTH COTTONWOOD DRIVE

RICHARDSON, TX 75080

EXAMINER

NORDMEYER, PATRICIA L

ART UNIT

PAPER NUMBER

1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/784,410	<b>Applicant(s)</b> MUNCASTER ET AL.	
	<b>Examiner</b> Patricia L. Nordmeyer	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Withdrawn Rejections***

1. Any rejections and or objections, made in the previous Office Action, and not repeated below, are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 13, 15 – 19, 23 – 31, 33, 34 and 39 – 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Tajima et al. (USPN 4,636,414).

Tajima et al. disclose a layered composite waterproofing membrane (Abstract, line 1) comprising a layer of rubberized asphalt having first and second sides (Column 4, lines 19 - 26; Abstract, lines 2 - 4) with a flexible layer of durable plastic film continuously bonded to the first side (Abstract, lines 5 - 7) and a layer of geotextile continuously bonded to the second side (Abstract, line 2) as in claim 1. The rubberized asphalt is rubber-modified bitumen (Column 4, line 25) comprising from about 5 to about 20 or 10 to about 15 percent rubber (Column 4, lines 45 – 47) as in claims 2 – 4. As in claims 5 – 7, the rubberized asphalt is modified with a block copolymer chosen from styrene-butadiene-styrene block copolymer (Column 4, lines 39 - 40) or

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styrene-isoprene-styrene block copolymer (Column 4, lines 40 - 41). As in claims 8 and 9, the plastic film has a thickness ranging from about 1 mil up to a thickness where the layer ceases to be flexible (Column 4, lines 15 - 18), and the plastic is cross-laminated to resist punctures (Column 4, lines 6 - 14). With regard to claims 10 and 11, the plastic film layer has a thickness ranging from about 10 to about 25 mils or about 20 mils (Column 4, lines 15 - 18). The plastic film layer comprises polyethylene (Column 4, line 2) as in claim 12. Regarding claim 13, the plastic film layer comprises propylene (Column 4, lines 2 - 3). As in claims 15 - 19, the geotextile is non-woven, made of fibers comprising olefinic polymers, poly-alpha olefins and polyesters or polypropylene (Column 3, lines 50 - 55). Regarding claims 23 and 24, the membrane has an overall thickness ranging from about 30 to about 150 mils or about 65 to about 95 mils (Column 5, lines 29 - 32). Tajima et al. also disclose a layered composite waterproofing membrane (Abstract, line 1) having an overall thickness (Column 5, lines 29 - 32) and comprising a layer of rubberized asphalt having first and second sides (Column 4, lines 19 - 26; Abstract, lines 2 - 4) with a flexible layer of durable plastic film continuously bonded to the first side (Abstract, lines 5 - 7) and a release liner releasably attached to the second side (Column 7, lines 12 - 16), the plastic film layer having a thickness comprising about  $\frac{1}{4}$  to about  $\frac{1}{3}$  of the overall thickness of the membrane (Column 4, lines 15 - 18) as in claim 25. The rubberized asphalt is rubber-modified bitumen (Column 4, line 25) comprising from about 5 to about 20 or 10 to about 15 percent rubber (Column 4, lines 45 - 47) as in claims 26 - 28. As in claims 29 - 31, the rubberized asphalt is modified with a block copolymer chosen from styrene-butadiene-styrene block copolymer (Column 4, lines 39 - 40) or styrene-isoprene-styrene block copolymer (Column 4, lines 40 - 41). The plastic film layer comprises polyethylene (Column 4, line 2) as

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in claim 33. Regarding claim 34, the plastic film layer comprises propylene (Column 4, lines 2 – 3). Regarding claims 39 and 40, the membrane has an overall thickness ranging from about 30 to about 150 mils or about 65 to about 95 mils (Column 5, lines 29 - 32). With regard to claims 41 - 43, the release liner comprises a polymeric film, a paper or is precoated with a release agent (Column 7, lines 12– 17, wherein both paper and polymeric films are conventional materials).

4. Claims 1, 12, 13, 25, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Naipawer, III et al. (USPGPub 2002/0037405).

Naipawer, III et al. disclose a layered composite waterproofing membrane (Paragraph 0003) comprising a layer of rubberized asphalt having first and second sides (Paragraph 0018) with a flexible layer of durable plastic film continuously bonded to the first side (Paragraph 0017) and a layer of geotextile continuously bonded to the second side (Abstract, line 2) as in claim 1. The plastic film layer comprises high density polyethylene (Paragraph 0017) as in claims 12 and 13. Naipawer, III et al. also disclose a layered composite waterproofing membrane (Paragraph 0003) having an overall thickness (Figure 1) and comprising a layer of rubberized asphalt having first and second sides (Paragraph 0018) with a flexible layer of durable plastic film continuously bonded to the first side (Paragraph 0017) and a release liner releasably attached to the second side (Paragraph 0021), the plastic film layer having a thickness comprising about  $\frac{1}{4}$  to about  $\frac{1}{3}$  of the overall thickness of the membrane (Paragraph 0017) as in claim 25. The plastic film layer comprises high density polyethylene (Paragraph 0017) as in claims 33 and 35.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20 – 22 and 36 – 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tajima et al. (USPN 4,636,414) in view of Bohnhoff (USPN 5,250,340).

Tajima et al. disclose a layered composite waterproofing membrane (Abstract, line 1) comprising a layer of rubberized asphalt having first and second sides (Column 4, lines 19 - 26; Abstract, lines 2 - 4) with a flexible layer of durable plastic film continuously bonded to the first side (Abstract, lines 5 - 7) and a layer of geotextile continuously bonded to the second side (Abstract, line 2). Tajima et al. also disclose a layered composite waterproofing membrane (Abstract, line 1) having an overall thickness (Column 5, lines 29 - 32) and comprising a layer of rubberized asphalt having first and second sides (Column 4, lines 19 - 26; Abstract, lines 2 - 4) with a flexible layer of durable plastic film continuously bonded to the first side (Abstract, lines 5 - 7) and a release liner releasably attached to the second side (Column 7, lines 12 - 16), the plastic film layer having a thickness comprising about 1/4 to about 1/3 of the overall thickness of the membrane (Column 4, lines 15 - 18). However, Tajima et al. fail to disclose a drainage mat attached to the high-density polyethylene layer by bonding through adhesive.

Bohnhoff teaches a drainage mat (Figure 7) attached to the high-density polyethylene layer (Column 1, lines 57 – 60) by bonding through adhesive (Column 4, lines 51 – 55) for the purpose of providing a stabilized surface for vehicular or pedestrian traffic (Column 4, lines 63 – 66).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the drainage mat attached to the high density polyethylene layer by bonding through adhesive in Tajima et al. in order to provide a stabilized surface for vehicular or pedestrian traffic as taught by Bohnhoff.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tajima et al. (USPN 4,636,414) in view of Terry et al. (USPN 5,763,036).

Tajima et al. also disclose a layered composite waterproofing membrane (Abstract, line 1) having an overall thickness (Column 5, lines 29 - 32) and comprising a layer of rubberized asphalt having first and second sides (Column 4, lines 19 - 26; Abstract, lines 2 - 4) with a flexible layer of durable plastic film continuously bonded to the first side (Abstract, lines 5 - 7) and a release liner releasably attached to the second side (Column 7, lines 12 - 16), the plastic film layer having a thickness comprising about  $\frac{1}{4}$  to about  $\frac{1}{3}$  of the overall thickness of the membrane (Column 4, lines 15 - 18). However, Tajima et al. fail to disclose a release liner with a thickness ranging up to about 4 mils.

Terry et al. teach a release liner with a thickness ranging up to about 4 mils (Column 4, lines 47 – 47) as part of moisture barrier (Column 8, lines 36 – 37) for the purpose of protecting the tacky surface of the bitumen prior to use (Column 4, lines 55 – 58).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the release liner with a thickness ranging up to about 4 mils in Tajima et al. in order to protect the tacky surface of the bitumen prior to use as taught by Terry et al.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1 – 43 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571)272-1496. The examiner can normally be reached on Mon.-Thurs. from 10:00-7:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L. Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia L. Nordmeyer  
Primary Examiner  
Art Unit 1794

/Patricia L. Nordmeyer/  
Primary Examiner, Art Unit 1794